



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VFS FINANCING, INC.

Plaintiff,

-against-

09 Civ. 8943 (DAB)
ADOPTION OF REPORT
AND RECOMMENDATION

MARSHALL AVIATION, LL, MTM
ENTERPRISES, INC. & BRIAN M.
MARSHALL,

Defendants.

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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon a Report and Recommendation ("Report") dated May 27, 2011 of United States Magistrate Judge Andrew J. Peck, who set out his rationale orally at a conference also held on May 27, 2011. The Report recommends that Plaintiff's Motion for Summary Judgment (Docket # 18) against Defendant Brian M. Marshall be granted as to liability in the amount of \$15,083,310.58 principal, plus interest of \$126,922.35 through June 22, 2008, the date of default. The Report recommends that summary judgment be denied as to the question of whether Plaintiff VFS Financing, Inc. acted in a commercially reasonable manner when disposing of the collateral, and therefore as to the amount of any offset to which Mr. Marshall may be entitled.

According to 28 U.S.C. § 636(b)(1)(C), "[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations." 28 U.S.C. § 636(b)(1)(C); see also Fed. R.

Civ. P. Rule 72(b)(2) (stating that "[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations"). No objections were filed.

Having reviewed the transcript of May 27, 2011 and Magistrate Judge Andrew J. Peck's Order of May 27, 2011, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation, of United States Magistrate Judge Andrew J. Peck, dated May 27, 2011, Docket #28, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety;

2. Plaintiff VFS Financing Inc.'s Motion for Summary Judgment as to Defendant Brian M. Marshall is GRANTED as to liability in the amount of \$15,083,310.58 principal, plus interest of \$126,922.35 through June 22, 2008; and

3. Plaintiff VFS Financing Inc.'s Motion for Summary Judgment as to Defendant Brian M. Marshall is DENIED as to whether Plaintiff used commercially reasonable measures to sell

the aircraft (and therefore also as to the computation of interest, at the 18% contractual default rate, since June 23, 2008).

SO ORDERED.

DATED: New York, New York

July 14, 2011

Deborah A. Batts

Deborah A. Batts
United States District Judge